

# Amendments Relating to Motions for Judgment and for New Trial

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By its enactment of Senate Bill No. 158, effective October 27, 1953, the 100th General Assembly has amended certain sections of the Revised Code relating to motions for judgment notwithstanding the verdict and motions for a new trial,<sup>1</sup> and a new section has been added.<sup>2</sup> These changes affect the disposition of both motions as well as the time for filing the motion for judgment.

Prior to 1945, it was required by the Ohio General Code that motions for new trial and motions for judgment n.o.v. be filed within three days following the rendition of the verdict,<sup>3</sup> and the judgment could not be entered by the court until after the three days had passed.<sup>4</sup> This three-day waiting period between the verdict and judgment and the additional period during which the court considered the motions (often amounting to weeks or months) caused a postponement in the fixing of judgment liens and other priority rights, often to the prejudice of the prevailing party. In 1945 the Ohio General Assembly took steps to remedy the situation by amending the sections of the Ohio General Code relating to motions for new trial. These amendments provided that a motion for new trial should be filed within ten days after the judgment of the court had been journalized,<sup>5</sup> and eliminated the compulsory waiting period between the verdict and the judgment.<sup>6</sup> As a result of the 1945 amendments, a judgment may be entered immediately upon the return of the verdict. Since the amendments did not extend the time for filing a motion for judgment n.o.v., however, the losing party was often precluded from filing such motion because it was still required that the motion be filed before the judgment was entered. Thus, under the 1945 amendments, if a party anticipated an unfavorable jury verdict he could prepare in advance a motion for judgment notwithstanding the verdict and file it immediately after the verdict and before the judgment had been entered by the clerk, but the party who was surprised by an unfavorable verdict often found that the judgment on the verdict had been entered

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<sup>1</sup> OHIO REV. CODE §§ 2323.15, 2323.18, 2323.19, and 2505.07.

<sup>2</sup> OHIO REV. CODE § 2323.181.

<sup>3</sup> OHIO GEN. CODE § 11578.

<sup>4</sup> OHIO GEN. CODE § 11599.

<sup>5</sup> OHIO REV. CODE § 2321.19.

<sup>6</sup> OHIO REV. CODE § 2323.15.

before he could prepare and file his motion. On the other hand, from the standpoint of the plaintiff who obtained a jury verdict in his favor the procedure was still objectionable in that the filing of a motion n.o.v. before judgment could be entered on the verdict would delay the fixing of the judgment lien.

#### THE NEW PROCEDURE

The recent enactments relative to motions for new trial and for motions notwithstanding the verdict have apparently corrected the deficiencies described above and are a definite step forward in the clarification of the entire procedure governing such motions. Perhaps the most salutary change effected by the new legislation is contained in Revised Code Section 2323.181, which provides that the time for filing a motion for judgment (no longer referred to as a motion for judgment notwithstanding the verdict) is the same as that for filing a motion for new trial, i.e., within ten days after the judgment has been journalized. As a result of this change in the time limitation, the party desiring to file such a motion will no longer be precluded by the lack of time between the verdict and the entering of the judgment on the journal. The plaintiff who prevails at the trial level is likewise benefited by the change since the motion for judgment is now filed after the judgment has been entered and the judgment lien has attached. As under the prior procedure relating to motions for new trial, however, the court may stay the execution of or any proceedings to enforce a judgment until after the time has elapsed for filing a motion for judgment or a motion for new trial and during the disposition thereof.<sup>7</sup>

Another beneficial change has been brought about by the provision that a motion for judgment may be filed by either party even though the jury may have failed to reach a verdict.<sup>8</sup> Heretofore many lower courts had felt that a motion for judgment notwithstanding the verdict could be filed only after a jury verdict had been entered, whereas under the new procedure a motion for judgment may be filed within ten days after the jury has failed to reach a verdict and the fact is evidenced by a journal entry filed with the clerk for journalization. It would seem that by permitting the entry of a judgment notwithstanding the fact that there has been a "hung" jury the necessity of many costly and time consuming retrials will be obviated.

Section 2323.181 also precludes piecemeal appeals from rulings on motions after trial. Under the new Section the motion for judgment may be filed before or after or simultaneously with a motion for a new trial, and if both motions are filed, whether by the same or different parties, the court must act first upon the motion for

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<sup>7</sup> OHIO REV. CODE § 2323.19.

<sup>8</sup> OHIO REV. CODE § 2323.18.

judgment and then upon the motion for new trial. If both motions are sustained by the court, the sustaining of the motion for new trial will be conditional, *i.e.*, a new trial will be had only in the event that the ruling on the motion for judgment is reversed on appeal. If the court overrules the motion for judgment, it must then consider and decide any motion for new trial that has been filed. In the discretion of the court, the motions may be heard separately or together, but they must be decided in the order indicated.

A few illustrations will serve to demonstrate the manner in which the new procedure will apply to various situations. If a case is tried to a jury but the jury is unable to arrive at a verdict, either party may file a motion for judgment under Section 2323.18 of the Revised Code and thus attempt to circumvent a stalemate. The party wishing to file a motion may do so within ten days after the journalizing of the entry showing that the jury was discharged after failing to arrive at a verdict. It is, of course, specifically provided that judgment may be given by the court only if the party requesting same is entitled to such relief as a matter of law.

In a second case let us assume that the plaintiff obtains a favorable jury verdict. As under the 1945 amendments the judgment may be entered on the journal forthwith, but as a result of the recent change in the procedure the defendant has ten days after the journalization in which to file a motion for judgment under Section 2323.18. If defendant files his motion promptly, he still has the remainder of the ten days in which to file a motion for new trial,<sup>9</sup> regardless of whether or not his motion for judgment has been ruled upon. In a case of this type, *i.e.*, where both motions are filed, the court is required to rule first on the motion for judgment and then on the motion for new trial. If the defendant's first motion is one for new trial it would not be expected that he would later file a motion for judgment, but because a party may elect to file in that order the court will in all probability wait until the ten-day period has elapsed before ruling on the motion for new trial.

If the court sustains both motions, the plaintiff may appeal from the ruling on the defendant's motion for judgment, and the time for appeal does not begin to run until the entry of the ruling on the last motion decided.<sup>10</sup> If the sustaining of the motion for judgment is affirmed by the appellate courts, the ruling on the motion for new trial will have no effect because it was conditioned upon the reversal of the order sustaining the motion for judgment. If the appellate courts should reverse the ruling on the motion for judgment, the probable result will be a new trial, since the appellate

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<sup>9</sup> OHIO REV. CODE § 2321.19.

<sup>10</sup> OHIO REV. CODE § 2505.07.

courts can consider and reverse the granting of a new trial only upon a finding of an abuse of discretion on the part of the trial court.

If the defendant's motions for judgment and for new trial are both overruled by the trial court, the defendant may appeal from both rulings since each ruling constitutes a failure to vacate the judgment previously entered on the verdict, which judgment is a final order.

If the motion for judgment is overruled, the court may sustain the motion for new trial unconditionally. In this case the plaintiff can not appeal unless he can show an abuse of discretion but the defendant may wish to appeal from the overruling of his motion for judgment. If he is not successful on appeal, the defendant will still be able to avail himself of a new trial, but as a practical matter the defendant may elect to proceed with the new trial accorded him by the trial court without appealing from the adverse ruling on his motion for judgment.

Although it is very unlikely it is nevertheless conceivable that the trial court may sustain the motion for judgment and overrule the motion for new trial. In a case of this type the defendant would undoubtedly be content with his judgment and not initiate an appeal from the ruling on his motion for new trial. It would seem, therefore, that the only party likely to initiate an appeal from this combination of rulings would be the plaintiff, and the appeal would be from the sustaining of defendant's motion for judgment. It is felt that once such an appeal is started by the plaintiff, the defendant, in order to protect his interests, should raise in the court of appeals the issue of the overruling of his motion for new trial.

It would be premature to state at this time that no situation will arise that is not covered by the new procedure, but to the writer it seems that much has been accomplished in the way of eliminating the deficiencies previously existing and in establishing a workable system for the handling of motions after trial. Only time and experience will show whether the changes will be beneficial in every instance or whether there is a need for further amendment.